



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 23, 1996

The Honorable Tim Cone
Criminal District Attorney
Upshur County Justice Center
405 North Titus Street
Gilmer, Texas 75644

Letter Opinion No. 96-053

Re: Whether a lease-purchase agreement between a county and an appraisal district is governed by section 292.001 or chapter 263 and section 272.001 of the Local Government Code (ID# 38711)

Dear Mr. Cone:

You ask about a proposed transfer of real property from Upshur County (the "county") to the Upshur County Appraisal District (the "appraisal district"). You state that the county currently owns an unoccupied bank building that it received by donation.¹ The appraisal district has proposed to lease the building with an option to purchase. You indicate that it is not clear whether the lease-purchase agreement would constitute a lease or a sale. You ask whether the lease-purchase agreement is governed by section 292.001 or chapter 263 and section 272.001 of the Local Government Code.

We begin by observing that although the county and the appraisal district may be geographically coextensive, they are distinct political subdivisions. Appraisal district officials are not county officials; they are not entitled to office space provided by the county. See Attorney General Opinion JM-191 (1984) at 2.² A commissioners court has only those powers specifically conferred by statute, and therefore the county may enter the proposed lease-purchase agreement only pursuant to expressly applicable statutes. *Id.*

Chapter 292 authorizes a county to obtain office space in addition to the office space available in the county courthouse. Section 292.001, subsection (a) authorizes a commissioners court to obtain office space for various county purposes. Subsection (c) authorizes a commissioners court to lease or rent to any person any part of a building that is not necessary for the purposes described by subsection (a). Chapter 292 does not set forth any requirements or procedures for leasing office space obtained pursuant to that chapter. By contrast, chapter 263 generally requires a county to sell or lease real property at public auction. Local Gov't Code § 263.001. In addition, chapter 263 permits a

¹You do not ask and we do not address whether the county was authorized to accept this donation. See, e.g., Attorney General Opinion JM-1019 (1989) at 4, Letter Opinion No. 88-106 (1988) at 1 (opining that county must have specific statutory authorization to accept donation for a particular purpose).

²As you note in your letter, the reasoning of Attorney General Opinion JM-191 requires that "the County and the Appraisal District should maintain a healthy degree of independence."

county commissioners court to adopt a procedure to sell or lease property, including office space, through a sealed-bid or sealed-proposal procedure. *Id.* § 263.007. Section 272.001 sets forth certain notice and bidding requirements that a county must satisfy in order to sell real property or exchange it for other land. *See id.* § 272.001(a).³

In Attorney General Opinion JM-1197, this office considered whether a county was authorized to lease office space to an appraisal district without complying with section 263.001 of the Local Government Code. After noting that counties may sell or lease real estate pursuant to section 263.001 or “by other means authorized by the constitution or statutes,”⁴ this office stated, “We construe section 292.001 to constitute the ‘other means’ by which a county is authorized to enter into a lease agreement with an appraisal district, thereby rendering compliance with section 263.001 of the Local Government Code unnecessary.” Attorney General Opinion JM-1197 (1990) at 7. Thus, if the proposed lease-purchase agreement is authorized by section 292.001, it is not subject to the dictates of chapter 263. Conversely, if the proposed lease-purchase agreement is not authorized by section 292.001, chapter 263 will apply. In addition, section 272.001 will apply if the proposed lease-purchase agreement constitutes a sale of land.

First, we address whether chapter 263 or section 292.001 will apply. Section 292.001 does not appear to authorize the proposed transaction even if it is merely a lease as opposed to a sale. Subsection (c) of section 292.001 authorizes a county to lease excess office space in a building or suite of offices used by the county for county business under subsection (a). A county’s authority to lease office space in subsection (c) is ancillary to the exercise of a county’s authority under subsection (a). Subsection (c) does not permit the county to lease an entire building that the county received by donation, no part of which houses county offices or is otherwise used by the county for county business pursuant to subsection (a). Because section 292.001(c) is inapplicable, the requirements of chapter 263 apply. These requirements preclude the county from merely accepting the appraisal district’s offer.

Second, we also address whether section 272.001 will apply. We cannot definitively determine whether the proposed lease-purchase agreement constitutes the sale of real property for purposes of section 272.001, however, for the following reasons. We are not aware of any authority distinguishing between leases and sales for purposes of

³The requirements of Local Government Code, section 272.001(a) do not apply to a real property interest conveyed to a governmental entity that has the power of eminent domain. Local Gov’t Code § 272.001(b)(5); *see also El Paso County v. City of El Paso*, 357 S.W.2d 783 (Tex. Civ. App.—El Paso 1962, no writ) (analogous statute governing sale of real property by municipalities inapplicable when proposed grantee is another governmental agency having powers of eminent domain); Attorney General Opinion DM-232 (1993). An appraisal district does not have the power of eminent domain. *See generally* Tax Code ch. 6 subch. A (establishing appraisal districts).

⁴Attorney General Opinion JM-1197 (1990) at 7 (quoting Attorney General Opinion JM-335 (1985) at 1-2).

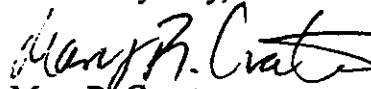
section 272.001. Courts considering whether transactions between private parties constitute a lease or a sale for purposes of other statutes have emphasized the importance of the lessee's option to purchase the leased property at the end of the contract term. See generally *Transamerican Leasing Co. v. Three Bears, Inc.*, 586 S.W.2d 472, 478 (Tex. 1979); *Brokers Leasing Corp. v. Standard Pipeline Coating Co.*, 602 S.W.2d 278, 280-81 (Tex. Civ. App.—Dallas 1980, writ ref'd n.r.e.). This office has addressed whether a county has title to property under a lease-purchase agreement for purposes of exemption from ad valorem taxation. See Attorney General Opinion DM-383 (1996). That opinion suggests that a county holds equitable, taxable title to real property if it may take legal title to property after it has performed certain actions, compelling the legal title holder to relinquish title. *Id.* at 6-7. It concluded, however, that the determination whether a county holds equitable title under a lease-purchase agreement "is a question involving the resolution of fact questions and the construction of a contract, both of which are not amenable to the opinion process." *Id.* at 7. Therefore, even if the legal standard for distinguishing between leases and sales for purposes of section 272.001 was clear, we would not be able to definitively determine whether the proposed lease-purchase agreement constitutes sale of real property for purposes of section 272.001.

We believe that a court would likely conclude that a transaction in which a county transfers equitable title to county real property to another entity with an irrevocable option to purchase constitutes a sale of land for purposes of section 272.001. Ultimately, however, the determination whether a particular lease-purchase agreement constitutes a sale would involve questions of fact and contract interpretation and is therefore beyond the scope of an attorney general opinion.⁵

S U M M A R Y

A lease of a building that a county received by donation and does not use for county purposes is not a lease of excess county office space under Local Government Code section 292.001(c); the requirements of Local Government Code chapter 263 would apply, precluding the county from merely accepting an offer to lease or purchase the building. In addition, if the transaction constitutes a sale, the requirements of Local Government Code section 272.001 would apply.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee

⁵Because the requirements of chapter 263 and section 272.001 clearly preclude the county from merely accepting the appraisal district's offer, thus resolving your query, we need not address the relationship between those requirements.